

**MONTANA FIFTH JUDICIAL DISTRICT COURT  
LOCAL RULES**

**1. LAW & MOTION:**

The District Court Law & Motion typical schedule is as follows:

Monday - Madison County  
Tuesday & Thursday - Beaverhead County  
Wednesday - Jefferson County

Counsel and parties should confirm hearing dates with the Clerk of Court.

**2. PLEADINGS & MOTIONS:**

- 2.1 Briefs shall not exceed 20 pages without leave of the Court for good cause demonstrated.
- 2.2 The Clerk shall file documents other than a complaint or first amended complaint only when accompanied by proper documentation demonstrating service. Other documents shall be returned forthwith and without further order.
- 2.3 No copy of filed documents should be provided separately to the Judge unless; 1) the party wishes to obtain expedited consideration before the regularly scheduled Law & Motion day 2) a Judge from another District assumes jurisdiction of the case.
- 2.4 A demand for jury trial shall be made upon filing of the complaint or answer and shall be noted in the caption as well as the body of the document.
- 2.5 When a matter is fully submitted and ready for a decision from the Court, the moving party should file a Notice to bring the matter to the Judge's attention in the event a decision has not been rendered within 30 days.

**3. ATTORNEYS:**

- 3.1 *Pro Hac Vice* - An attorney seeking to appear *pro hac vice* shall file a motion and proposed order accompanied by a copy of the State Bar of Montana *Pro Hac Vice* Application and confirmation correspondence from the Bar Admissions Administrator.
- 3.2 Attorney Fees. Consideration of attorney fees shall be deferred until a final decision or order on the merits has been issued by the Court. Within ten (10) days after judgment is issued, the party seeking attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within ten (10) days thereafter file a request for a hearing. Failure to file such a request shall be deemed a waiver of the right to a hearing on fees. In the event of a hearing, attorney fees and costs may be awarded to the prevailing party.
- 3.3 Release of Counsel of Record on Notice. When a final disposition has been made of any case and the time for appeal has expired, all counsel of record shall be automatically relieved of their duties as counsel of record provided they first file a Notice of Termination

with the Clerk of Court and serve the same on opposing counsel and their client.  
Thereafter, notice must be served on the adverse party as provided in Rule 4(D), MRCP.

**4. NO APPEARANCE BY PARTY REQUIRED:**

No personal appearance by the parties shall be required in the following cases and under the circumstances specified:

1. Quiet Title Actions - Where facts are uncontroverted and an affidavit of the salient facts has been filed with the Court and the opponents are in default.
2. Probate of Estates - Where proper documentation has been supplied and there is no objection from any interested party.
3. Dissolutions - a) Where both parties are represented by counsel or there is written certification that the opposing party recognizes that counsel is appearing only for one party and nonetheless decides to proceed without counsel b) there is filed a verified petition and/or uncontroverted affidavit including proof of notice to opposing party c) there are notarized written agreements on all issues and d) a completed Vital Statistics form, judgment fee and proposed order accompanies documents.

**5. HEARINGS & TESTIMONY:**

- 5.1 Telephonic Testimony - 1) Witnesses may testify by telephone upon stipulation of counsel or upon leave granted by the Court after notice and opportunity for the opponent to respond 2) Witnesses may be sworn via telephone by Clerk of Court.
- 5.2 The Court will set hearings on motions as required. In the event counsel or parties encounter extreme difficulties because of the date selected, they should consult with the opponent and then advise the Court by stipulation or file and serve a motion supported by brief and affidavit stating efforts to contact the opponent and the opponent's position.

**6. DEFAULT JUDGMENTS/WRITS OF EXECUTION:**

- 6.1 Default judgments in collection actions shall include information on how interest has been calculated including, but not limited to, the interest rate, per diem and number of days accrued.
- 6.2 Writs of execution shall include all of the information on Exhibit A attached in a substantially similar form.

**7. GENERAL PROVISIONS**

- 7.1 There shall be no food or drink in the Courtroom except for water in suitable containers.
- 7.2 No cell phones shall be allowed in the Courtroom unless they are disabled.
- 7.3 All persons who remove any books or materials from a County Law Library shall leave a note on the shelf which contains the following information: 1) Name and address 2) title of book/material 3) removal date.

**8. SETTLEMENT CONFERENCES OR MEDIATIONS:**

- 8.1 Settlement Conference Required. In each civil case subject to a Scheduling Order a Settlement Conference is required before a case may be tried, unless a stipulation executed by all counsel of record and any unrepresented party is filed with and approved by the Court waiving a Settlement Conference.
- 8.2 Counsel who will try the case and all parties shall attend in person. Out-of-area corporations or insurance companies shall have a representative present. Participants must have settlement authority.
- 8.3 Proceeding Confidential. No person present at a Settlement Conference, including the Settlement Master, shall be subject to examination concerning statements made by any person at the Settlement Conference. The parties will not subpoena or otherwise require the Settlement Master to testify regarding the Settlement Conference or the Settlement Master's opinions.

## **9. TRIALS:**

- 9.1 Jury Instructions. The parties shall supply the Court with proposed jury instructions by electronic mail to dkaatz@mt.gov. Instructions shall be numbered and shall have the authority for the instruction printed at the bottom or on a second page.
- 9.2 All exhibits shall be pre-marked and exchanged before hearings or trial. Plaintiff/Petitioner shall mark exhibits numerically and Defendant/Respondent shall mark exhibits alphabetically.
- 9.3 Each party may file and serve a Trial Brief which shall contain 1) no more than one paragraph outlining each legal issue with citations to controlling law 2) a list of witnesses and a two or three sentence synopsis of the testimony of each witness and 3) a list of exhibits.
- 9.4 For bench trials the parties shall supply the Court with proposed findings and conclusions by electronic mail to dkaatz@mt.gov.

## **10. CRIMINAL ACTIONS:**

- 10.1 Omnibus Hearing. When a plea of Not Guilty is entered, an omnibus order form shall be completed. The state shall complete its portion and deliver the omnibus form to Defendant within 2 weeks following arraignment. Defendant's portion shall be completed within 2 weeks and returned to the court for confirmation and scheduling of hearing and trial dates.
- 10.2 Bail. No real estate bond offered pursuant to Section 46-9-403 MCA, shall be accepted by the Clerk of District Court unless it is accompanied by the sworn schedule specified in that statute and a current title report or unless it has been approved by the County Attorney or approved by the Court after hearing.

## **11. WEAPONS:**

Only on-duty law enforcement officers or court security personnel shall possess firearms, knives, or other weapons in the Courtroom. Anyone wishing to enter the courtroom may be required to submit to a search of their person or belongings by security personnel.

## **12. CHILD SUPPORT GUIDELINES REQUIREMENTS:**

In any case in which the Court will be requested to issue an order setting or modifying child support, the parent's financial affidavits and uniform child support guidelines worksheets or acceptable summaries thereof shall be submitted to and filed with the Court prior to entry of any child support order as required by Section 46.30.1515, A.R.M. This requirement applies to default and stipulated cases as well as contested cases.

## **13. PARENTING PLAN GUIDELINES:**

13.1 The parties in parenting plans shall be designated "Mother" and "Father" rather than "Petitioner" and "Respondent".

13.2 A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply the divorce itself, but continuing conflict between the parents before, during and after the divorce. To minimize conflict over the children, the parents should agree on a parenting arrangement for frequent and meaningful contact with both parents with as little conflict as possible. The ideal arrangement is for the parents to develop their own parenting plan in order to minimize attorney and court involvement in such personal affairs. The following guidelines will help the parents in knowing what the presiding judge in the Fifth Judicial District believes is generally reasonable, unless special circumstances require a different arrangement. In the event the parenting plan becomes an issue in court, the judge will order whatever parenting plan best meets the needs of the children. Parents maybe required to attend information sessions on the impact of their divorce upon children.

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. The basis rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents and consistently enforced by all, so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana, grandparents have a legal right to reasonable visitation with their grandchildren, if it is in their best interests. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

In cases where both parents resided in the same community at the time of separation and

then one parent left the area, thus changing the parenting plan, the Court will consider imposing the travel costs for the children necessary to facilitate future parenting time on the parent who moved. The Court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

- 13.3 **Parental Communication.** Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone, at their residences and not at their places of employment.
- 13.4 **Grade Reports and Medical Information.** Each parent shall provide the other parent with grade reports and notices from school as they are received and the children(s) school(s) shall be notified of the split households and advised to send copies of the children's school documents to each parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. Each parent shall notify the other parent of all school and other events (like church or Scouts) involving parental participation. If the child is taking medications, each parent shall provide a sufficient amount and appropriate instructions for their scheduled time with the other parent.
- 13.5 **Parenting Time Clothing.** Each parent shall send an appropriate supply of children's clothing with them for their scheduled time with the other parent. These clothes are to be considered the children's clothes, and shall be returned clean (when reasonably possible) with the children. Each parent shall advise,, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.
- 13.6 **Withholding Support of Scheduled Parenting Time.** Neither parenting time nor child support is to be withheld because of either parent's failure to comply with a court order. Only the Court may enter sanctions for non-compliance. Children have a right both to support and time with each parent, neither of which is dependent upon the other. In other words, no support does not mean no parenting time and no parenting time does not mean no support. If there is a violation of either parenting time or a support order, the exclusive remedy is to apply to the Court for appropriate sanctions.
- 13.7 **Adjustments in the Parenting Time Schedule.** Although this is a specified schedule, the parties are expected to fairly modify parenting time when family necessities, illnesses, or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.
- 13.8 **Each Parent's Vacation.** Unless otherwise specified in a court order or agreed by the parties, each parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time spent with the other parent.
- 13.9 **Insurance Forms.** The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist, or other provider not so approved

- or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.
- 13.10 **Child Support Guidelines.** Unless a court order otherwise provides, support shall not abate during any period.
- 13.11 **Missed Parenting Time.** Each parent shall notify the other parent when a particular scheduled parenting time cannot occur due to events beyond either parent's control, such as illness of the parent exercising parenting time or the child. Missed parenting time not shall not be replaced unless mutually agreed upon by the parties.
- 13.12 **Parenting Time a Shared Experience.** Because it is intended that parenting time be a shared experience between siblings and, unless these guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all the children shall participate in any particular parenting time schedule.
- 13.13 **Telephone Communication.** Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The children may, of course, call either parent, though at reasonable hours, frequencies, and at the cost of the parent called if it is a long-distance call. During long vacations, the parent with whom the child is on vacation is required to make the child available to telephone calls only every other day. The parent the child is with shall not refuse to answer the telephone or turn off the telephone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.
- 13.14 **Mail Contact.** Parents have an unrestricted right to send cards, letters, and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.
- 13.15 **Privacy of Residence.** A parent may not enter the residence of the other except by express invitation of the resident parent. Parents should refrain from surprise visits to the other parent's home.
- 13.16 **Infants & Toddlers.** Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with parents who provide a sense of security, nurturing, and predictability.
- 13.17 **Children in Day Care.** In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more

accustomed to separations from both parents. The parent who exercises parenting time of a child under five should not during the visit place the child with a baby-sitter or day care provider. If the parent cannot be with the child personally, the child should be returned to the other parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

- 13.18 **Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.

13.19 **Special Circumstances.**

**a. Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all parenting time with the abusing parent should cease or be allowed only under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.

**b. Spouse Abuse.** Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the Court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised parenting time.

**c. Substance Abuse.** Parenting time should not occur when the parent is abusing drugs/alcohol.

**d. Long Interruption of Contact.** In those situations where one parent has not had an ongoing relationship for an extended period, parenting time should begin with brief visits and a gradual transition to the parenting time schedules suggested in these guidelines.

**e. Kidnaping/Threats.** Parents who have kidnaped or threatened to do so may have no parenting time or only supervised parenting time.

**f. Breast Feeding Child.** Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical or emotional well-being of the child. Until weaning has occurred, a nursing infant should have visits to accommodate the feeding schedule. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of parenting time.

**g. A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation and divorce.

**h. Religion and Culture.** Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on parenting time schedules to achieve these goals. These goals should not be used to deprive the other parent of parenting time.

i. **Other.** The Court will limit or deny parenting time to parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.

## 14. PARENTING TIME

- 14.1 **Weekends.** From Friday at 5:30 p.m. to Sunday at 7:00 p.m. (the starting and ending times may change by stipulation to fit the parents' schedules) or an equivalent period of time if the parent exercising parenting time is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits.
- 14.2 **Mother's Day-Father's Day.** The children are with their mother each Mother's Day weekend and with their father each Father's Day weekend.
- 14.3 **Extended Parenting Time.** One-half of the school summer vacation. The parents may agree that the time be consecutive or it may split into two blocks of time. If the child goes to summer school and it is impossible for the other parent to schedule this parenting time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in that parent's community. Summer parenting time supersedes children's summer activities.
- 14.4 **Christmas Vacation.** One-half of the school Christmas vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents agree on the division of this period, the court will usually choose that one parent shall have the first half in even-numbered years. In those years when Christmas does not fall in a parent's week, that parent shall have Christmas Day.
- 14.5 **Holidays.** Parents should alternate the following holiday weekends: Easter, Memorial Day, the 4<sup>th</sup> of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening. Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening. Easter weekend begins on Thursday evening and ends on Sunday evening. The 4<sup>th</sup> of July, when it does not fall on a weekend, shall include the weekend closest to the 4<sup>th</sup>. Holiday weekends begin at 5:30 p.m. and end at 7 p.m. on the appropriate days.
- 14.6 **Children's Birthdays.** A child's birthday should be alternated annually between the parents. If the birthday falls on a school day, it should be celebrated 3 p.m. to 9 p.m.
- 14.7 **Parent's Birthdays.** The children should spend the day with the parent who is celebrating the birthday, unless it interferes with the other parent's extended parenting time during vacation.
- 14.8 **Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and a regular weekend parenting time, the holiday takes precedence. Thus, if a parent misses a regularly scheduled weekend because it is the other parent's holiday, the



regular alternating parenting time schedule will resume following the holiday. If the other parent receives two consecutive weekends because of a holiday, regular alternating parenting time will resume the following weekend with the other parent.

- 14.9 **Parenting Time Before and During Vacations.** There will be no parenting time the weekend(s) before the beginning of a parent's summer vacation scheduled parenting time, regardless of whose weekend it may be. Similarly, that parent's alternating weekend parenting time(s) shall resume the second weekend after each period of summer vacation. Weekend parenting time "missed" during the summer vacation period will not be "made up."
- 14.10 **Notice of Canceled Parenting Time.** Whenever possible, the parent unable to exercise scheduled parenting time, shall give a minimum of three days notice of intent not to exercise all or part of the scheduled parenting time. When such a notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefor, shall be given. Both parents shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled parenting time necessary.
- 14.11 **Pick Up and Return of Children.** The responsibility of picking up and returning the children should be shared. Both parents have an obligation to be punctual.
- 14.12 **Additional Parenting Time.** Parenting time should be liberal and flexible. Parents should mutually agree to such additional parenting time as they find reasonable at any given time.
- 14.13 **Adolescents.** Within reason, parents should honestly and fairly consider their teenager's wishes regarding parenting time. Neither parent should attempt to pressure their teenager to make a parenting time decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

Dated: \_\_\_\_\_, 2006.

---

LOREN TUCKER, District Judge